

# NEWSLETTER

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## CONTENTS

Income Tax

FEMA

Changes in Income Tax Return for Asst. Year 2014-15

Registered Valuer – A New Concept



# INCOME TAX

**Smita Conductors Ltd. Mumbai Tribunal**

## **A) Applicable of Section 50 to depreciable assets:**

The relevant portion of Section 50 of The ITA states where the consideration received or accrued as a result of the transfer by the assessee of a capital asset, being land or building or both, is less than stamp valuation authority for the purpose of payment of stamp duty, the value so adopted or assessed shall, for the purpose of Section 48, be deemed to be the full value of consideration received or accruing as a result of such transfer.

The assessee contended that Section 50 should not be applicable to depreciable assets. However, this contention was not accepted by the Tribunal. Section

50 does apply to depreciable assets as well.

## **B) Applicable of Section 50C to depreciable assets:**

The relevant portion of Section 50 states ... Where the capital asset forming part of the block of assets in respect of which depreciation has been allowed, the provisions of sections 48 and 49 shall be subject to certain modifications & It goes on to state that the excess of sale consideration over the written down value of that block shall be deemed to be the capital gains arising from the transfer of short-term capital asset.

The Tribunal observed that Section 50, which deems the capital gain as short-term capital

gain is only for the limited purposes of section 48 and 49 which relate to computation of capital gain. The deeming provisions have to be read in stricter sense and be restricted only to the computation of capital gain and for the purpose of other provisions of the Act the capital gain has to be treated as long term capital gain.

Therefore, for the purpose of computation of capital gain, the property has to be treated as short-term capital gain under section 50, for the purpose of applicability of rate of tax; the same has to be treated as long term capital gain if the property is held for more than 3 years.

*cont.*

## **Allahabad Bank Agra Tribunal**

A short deduction of tax at source by itself does not make the payer an assessee in default under section 201(1) and 201(1A). In a case where the recipient of income has paid the taxes on income embedded in the payment from which tax withholding requirements were not fully or partly complied with, the taxes cannot be again recovered from the assessee making such payment to the recipient.

The Tribunal held that the deductor cannot be held as assessee in default till it is found that the recipient of income has also failed to pay such tax directly. Thus to declare a deductor, who has failed to deduct tax at source, a defaulter, the condition precedent is that the recipient has also failed to pay the tax directly.

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## **Baljeet Securities Pvt. Ltd. Calcutta High Court**

Section 73: Set off of speculation loss on derivative transactions against gain from delivery transactions.

The assessee Company had loss arising out of transactions in the nature of derivative activities and gain from the transactions under delivery basis. The explanation to Section 73 states that where any part of the business of a Company consists in the purchase and sale of shares of other Companies, such Company shall, for the purposes of the section, be deemed to be carrying on speculation business to the extent to which the business consists of purchase and sale of such shares. Therefore, the entire set of transactions carried on by the Company was within the umbrella of speculation transaction. There was as such no bar on setting off the loss arising out of derivatives from the income arising out of delivery of purchase and sale of shares.

The assessee Company was therefore entitled to set off both these nature of transactions under section 73 of The ITA.

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## **Rakeshkumar Gupta Allahabad High Court LSG Sky Chef (India) Pvt. Ltd. Mumbai Tribunal**

A similar judgment was passed by the Allahabad High Court and Mumbai Tribunal on granting TDS in spite of discrepancy with Form 26AS.

Though the Revenue has designed a wholesome procedure of in Form 26AS for accounting of TDS, the burden of providing as to why the said form does not reflect certain TDS amount for and on behalf of the assessee, cannot be placed on the assessee-deductee.

The assessee by furnishing TDS certificate containing full and proper details of the tax so deducted, has discharged the primary onus on him to claim credit of tax so deducted at source. Thereafter he cannot be further burdened in the matter. The Department is fully justified in making all the verification as regards the genuineness of the claim of the assessee, however, he cannot be denied credit of the TDS merely on the ground that the credit claimed by him do not match with the Form 26AS so generated.

Where there is discrepancy, the Revenue however has right to make inquiry and investigate the matter. The argument that the deductor may have mentioned wrong PAN so that TDS credit may get reflected in the account of another deductee, is no reason for not allowing credit for TDS in the hands of the actual deductee. Thus the onus squarely lies with the Revenue.

*Compiled by: CA Malay Damania, Partner*



# FEMA

## External Commercial Borrowing (ECB) General Corporate Purpose

The Reserve Bank of India in a major step towards liberalization of its policy on ECB, extended its permissible end use for general corporate purpose for Companies engaged in select sectors. The relaxation came into effect from 5th August 2013. The salient features of such ECB in general corporate purposes are as below:

- **Eligible business activities:** Entities engaged in the business activity of Manufacturing, infrastructure, hotels, hospitals and software.
- **Prohibition:** Companies engaged in the business of Trading, logistic services, financial services and

consultancy are not covered under this facility.

- **Eligible Lender:** Direct Foreign Equity Holder holding minimum of 25% of the paid up capital in the Indian Company.
- **Repayment terms:** Minimum average maturity period of 7 years
- **Repayment of principal amount** should commence only after completion of minimum average maturity period of 7 years
- **Pre-payment:** No pre-payment allowed before maturity
- **End-use restrictions:** Such ECB shall continue to not be used for purposes not permitted under the ECB

guidelines. They are:

- Investment in capital market
- On-lending
- Acquiring a Company in India
- Real estate sector
- Repayment of existing rupee loan
- Acquisition of land
- **Approval route:** It is necessary to obtain RBI approval in all such ECBs.
- **All in cost ceiling:** The cost of raising such ECB including interest shall not be more than 6 months LIBOR + 500 bps.
- **Reporting:** ECB 2 Return will have to be filed every month before 7th of the next month.

*Compiled by: CA Malay Damania, Partner*



## CHANGES IN IT RETURN for Asst Year 2014-15

Now, it's time to file Income Tax Returns for the Financial Year 2013-14 relevant to the assessment year 2014-15 since TDS compliances have been completed and Form 26AS updated. The due date for filing the income tax returns are:

A. 30th September for the taxpayers who is

- (a) a company
- (b) Other than a company, who are under Tax Audit under Income Tax or required to be audited under any law for the time being in force.
- (c) A working partner of a firm required to be audited under income tax or under any law.

B. 30th November for the taxpayers who are required to furnish report u/s. 92E that denotes transfer pricing cases.

C. 31st July for the taxpayers who are not covered above

In view of filing returns for the assessment year 2014-15, new changes are brought in various Forms of Income Tax Returns.

All taxpayers should file income tax returns before due date in the defined forms of Returns. In this year government has made various changes in the forms due to amendments in laws or for want of more information of tax payers with the intention to approach to defaulter tax payers or tax evaders.

The major changes in Income Tax Returns are as under:

1. All taxpayers filing E>Returns will have to compulsorily update correct mobile number and E- Mail ID's. Otherwise there will be login issues before uploading of return on income

tax Website.

2. Now onwards Income Tax Refund will be issued directly in the bank account of the taxpayer through ECS only, cheques are discontinued. Therefore utmost care should be taken while mentioning Bank Account Number and IFSC Code in the income tax returns.
3. From this year while claiming TDS in Income Tax return facility has been given to carry forward the TDS of previous year and brought forward TDS to next year. Due to this reconciliation of TDS claimed on Income and total available TDS as per Form 26AS can be made. Tax payers which follow cash system of accounting will be benefited, like Doctors, Advocates, Chartered Accountants and other professionals.

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# CHANGES IN IT RETURNS.. (cont.)

4. As per newly inserted Section 87A if annual income of the taxpayer is up to Rs. 500,000/- then Tax relief of maximum of Rs. 2,000/- is given.
  5. As per newly inserted Section 80EE if taxpayer has purchased house up to Rs. 40 Lakh and taken housing loan of Rs. 25 Lakh then taxpayer can claim deduction of interest up to Rs. 1 Lakh.
  6. If income of the taxpayer is more than Rs. 1 crore then surcharge of 10% is applicable.
  7. All salaries taxpayers will now have to give detail of LTA (Leave Travel Allowance) and HRA (House Rent Allowance) and other allowances separately. This will help Govt. to track proper claim of such deductions, recent HRA and LTA.
  8. From this year the details of short and long term capital gain will have to be given in three parts viz.
    - a) sale of land or building or both with stamp duty valuation
    - b) sale of STT paid shares and mutual funds
    - c) sale of other assets.
- In case of sale of land or building, Stamp Duty Value will have to be mentioned. Further if taxpayer is availing exemption under capital gains then value of newly purchased asset, date of acquisition of the asset and if invested in capital gain account then its details will have to be mentioned.
9. Detailed break-up of reserves and surplus i.e Capital Reserve, Capital Redemption reserve, Securities premium reserve, Debenture redemption reserve, Revaluation Reserve, Share options outstanding amount, others have to be given.
  10. Break-up of share application money less / more than 1 year be given.
  11. Corporate or LLP assessee will have to mention Corporate Identification Number or LLP Identification Number. Further Director or Designated Partner Identification Number will have to be mentioned. This will help in cross check of information with other legal departments by income tax department or visa a versa.
  12. As per newly inserted section 43 CA if, taxpayer have sold other than capital assets below stamp duty value (eg. builders / developers) then the difference between the two will be considered as deemed income of the assessee and tax will have to be paid on it.

13. If there is more than one owner of the house then, while mentioning details in the schedule of Income from

*cont.*

# CHANGES IN IT RETURNS.. (cont.)

House Property the percentage of co-ownership alongwith PAN of Co-owner will have to be furnished.

14. Details of dividend declared / distributed / paid alongwith DDT payments be provided.
15. Detailed information with regard to tax on distributed income of a domestic company on buy back of shares, not listed on stock exchange.
16. In ITR-4, all types of income are required to be separately disclosed.
17. In ITR-4, PAN of bad debts parties more than Rs. 1 lacs are required to be furnished.
18. In ITR-4, interest paid out side India or to a non resident is required to be separately disclosed.
19. Payments under the nature of salary to a non resident are required to be separately disclosed.
20. From this year e-filing of wealth tax return is compulsory and in this return the details of all wealth whether taxable or not, will have to be furnished in new form being Form BB shall be filed.

Now the government departments are equipped with computerized systems and Tax Officers are trained to function in such environment and also exchange information with other Government departments.

An example of the above instance has been seen in the case of arrangement of accommodation / hawala bills by some tax payers. The sales tax department has collected VAT alongwith interest and penalty on such bills and have also forwarded the information to income tax department who have proceeded to send notices u/s. 148 to reopen the earlier year assessments.

Now, almost the entire transactions of an assessee are closely monitored, therefore taxpayers should give correct information to all the departments without hiding the information as required by the respective department and should pay appropriate tax as per laws.

On getting registered a mobile number and e-mail id in with the department, the notices / information sent on e-mail / mobile shall be construed to be legally served. Therefore, the Department has started sending notices /SMS on e-mail / phone that may be construed to be legally valid. Therefore taxpayer cannot find escape route of non-receipt of notice and hence compliance of law will increase. All the taxpayers on receipt of such notice must forward the same to their tax consultant immediately.

*Compiled by: Mumtaz Ahmed, Tax Manager*



# REGISTERED VALUER

## A NEW CONCEPT

The Companies Act, 2013 (2013 Act), enacted on 29th August 2013 on accord of Honble Presidents assent, has the potential to be a historic milestone, as it aims to improve corporate governance, simplify regulations, enhance the interests of minority investors and for the first time legislates the role of whistle-blowers. The new law will replace the nearly 60-year-old Companies Act, 1956 (1956 Act).

Registered Valuer is one among the many new concepts introduced by a Companies Act, 2013 to provide for proper mechanism for valuation of various asset and liabilities related to a company and to standardize the procedure thereof. This will not only help in eliminating doubts relating to arbitrary valuation and window dressing but will not act as an assurance to the concerned stake

holders and regulators regarding authenticity of the valuation of the asset and liability under consideration. It also throws open a new area of professional opportunity. Section 247 of the Companies Act, 2013 contains provisions exclusively regarding registered valuers.

The Rules containing various provisions of Registered Valuers have not yet been notified by the Central Government. However Draft Rules have been published.

Definition (Section 247(1) & Rule 17.1):

The Draft Rules define "Registered Valuer" and state that a person to be eligible to act as a valuer, must register with the Central Government or institution or agency notified by the Central Government by filing an application for registration as a

valuer. Registered Valuer shall be appointed by the Audit Committee or in its absence, by its Board of Directors.

Who can act as a registered valuer (Rule 17.2):

An application for registration as valuer shall be made in Form No. 17.1 by individuals and firms and Form No. 17.2 by others, along with the fee as provided in Annexure B.

The Draft Rules also prescribe that a person who shall be eligible to apply for becoming a Registered Valuer is as follows:

A. a Chartered Accountant, Company Secretary or Cost Accountant who is in whole-time practice, or retired member of Indian Corporate Law Service or any person holding equivalent Indian or

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# REGISTERED VALUER.. (cont.)

Foreign qualification as the Ministry of Corporate Affairs may recognize by an order.

- b. a merchant banker registered with the Securities and Exchange Board of India.
- c. a member of the Institute of Engineers and who is in whole-time practice.
- d. a member of the Institute of Architects and who is in whole-time practice.
- e. a person or entity possessing necessary competence and qualification as may be notified by the Central Government from time to time.

Provided that persons referred to in (a), (c) and (d) and qualified person in (b) above shall have not less than five years continuous experience after acquiring membership of respective institutions.

Further in the case of merchant banker the valuation report shall be signed by the qualified person.

For the purposes of this rule, a person shall be deemed to be in whole-time practice, when individually or in partnership or in limited liability partnership or in merchant banker with other persons in practice who are members of other professional bodies, he, in consideration of remuneration received or to be received:

- (i). engages himself in the practice of valuation; or
- (ii). offers to perform or performs services involving valuation of any assets with the object of arriving at financial value of the asset being valued; or
- (iii). renders professional services or assistance in or about matters of principle or detail relating to valuation.

What requires valuation by a registered valuer under the Act?

Any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities which requires valuation under the provision of the Companies Act, 2013 shall be valued by a registered valuer.

In the Act, specific mention about valuation by registered valuer has been made in the following Sections:

**Section 62(1)(c)** Further issue of share capital, other than Rights Issue and Issue under a Scheme of Employee Stock Option.

**Section 192(2)** Non cash transaction involving directors

**Section 230(2)** Valuation report in case of a scheme of compromise or arrangement with creditors or members

**Section 236(2)** Purchase of minority shareholding

**Section 281(1)(a)** proviso Submission of report by company liquidator

**Section 305(2)(d)** Declaration of solvency in case of proposal to wind up voluntarily

**Section 319(3)(b)** Power of Company Liquidator to accept shares, etc., as consideration for sale of property of company.

## **Furnishing of Particulars in certain cases by registered valuers (Rule 17.3):**

Where any person who is registered as a valuer under section 247 or who has made an application for registration as a valuer under that section is, at any time thereafter,

- (a) sentenced to a term of imprisonment for any offence; or
- (B) found guilty of misconduct in his professional capacity by any association or institute or other body of which he is a member or with which he is registered;

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# REGISTERED VALUER.. (cont.)

he shall immediately after such conviction or finding, intimate the particulars thereof to the Central Government, institution or agency with which he is registered as a valuer and cease to act as valuer unless

- permitted by the Central Government, institute or agency with which he is registered as a valuer, or
- the order imposing penalty/sentence has been stayed by competent authority.

In case valuer is found guilty of professional misconduct or otherwise by the Institute of which he is a member or by National Financial Reporting Authority or where the SEBI removed the registration of the merchant banker, such valuer shall cease to be the valuer automatically and their name shall be removed from the register of valuer unless such order has been stayed by the Competent Authority.

Any ongoing assignment of such valuer, who has ceased to be a valuer, shall be assigned to other valuer from the panel maintained by Central Government or any authority or institution to complete the assignment, if no stay is granted on such appeal, if any.

## **Removal and restoration of names of valuers from register (Rule 17.4):**

### **Removal:**

The name of a registered valuer can be removed from the register by the Central Government if the government is satisfied

- that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact
- that he has been convicted of any offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity which, in the opinion of the Central Government or any authority, institution or agency, renders his name unfit to be kept in the register.
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A reasonable opportunity of being heard shall be given to the registered valuer before passing an order for removal of name of such registered valuer.

The Central Government or any authority, institution or agency may appoint one or more competent persons as enquiry officer(s) for conducting an enquiry as referred above. The officer(s) conducting an enquiry shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while make an enquiry and he may also call upon such experts from the field of law, economics, business, finance, accountancy, international trade, management, technology or such other discipline as he deems necessary to assist him in conducting the enquiry.

### **Restoration:**

The name can be restored on sufficient cause being shown to the satisfaction of the Central Government or any authority, institution or agency as may be applicable.

### **Appeal (Rule 17.5):**

A registered valuer aggrieved by an order passed for removal of name may prefer an appeal in accordance with the procedure laid down in the respective Acts, regulations or bye-laws governing the respective professional. An appeal against the order of the Central Government shall be preferred to the Tribunal.

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## Methods of Valuation (Rule 17.6):

- Before adoption of the methods of valuation, the registered valuer shall decide the approach to valuation based upon the purpose of valuation:
  - (a) Asset Approach
  - (b) Income Approach
  - (c) Market Approach
  
- A valuer should keep the following considerations in mind while providing valuation services:
  - i. Nature of the business and the history of the enterprise from its inception
  - ii. Economic outlook in general and outlook of the specific industry in particular
  - iii. Book value of the stock and the financial condition of the business
  - iv. Earning capacity of the company
  - v. Dividend paying capacity of the company
  - vi. Goodwill or other intangible value
  - vii. Sales of the stock and the size of the block of stock to be valued
  - viii. Market prices of stock of corporations engaged in the same or a similar line of business
  - ix. Contingent liabilities or substantial legal issues, within India or abroad, impacting the business
  - x. Nature of instrument proposed to be issued, and nature of transaction contemplated by the parties
  
- One or more of the following prescribed methods or any other method accepted or notified by the Reserve Bank of India, Securities and Exchange Board of India or Income Tax Authorities or that may deem fit to adopt by the Valuer can be used and justified in the report:
  - i. Net Asset Value Method: Represents the value of an entity's assets less the value of its liabilities.
  - ii. Market Price Method: Under this method the current price at which the subject of valuation is bought or sold in the market between unrelated third parties is taken into account.
  - iii. Yield Method / Profit Earning Capacity Value (PECV): Under this method the value is calculated by capitalizing the average of the after tax profits for the preceding three years (or such other period provided adequate justification is available for choosing another period) at capitalisation rates specified in the report.
  - iv. Discounted Cash Flow Method (DCF): This method expresses the present value of the business as a function of its future cash earnings capacity.
  - v. Comparable Companies Multiples Methodology (CCM): This Method uses the valuation ratios of a publicly traded company and applies that ratio to the company being valued (after applying appropriate discount or premium, as the context may require).
  - vi. Comparable Transaction Multiples Method (CTM): Entails valuation on the basis of similar transactions among unrelated parties in the peer group companies.

# REGISTERED VALUER.. (cont.)

- vii. Price of Recent Investment Method (PORI): Entails valuation on the basis of recent investment received in the company from an independent investor.
- viii. Sum of the Parts Valuation (SOTP): Where each part of the business is valued according to method(s) appropriate to that business, and the results are summed up to obtain total value of the business.
- ix. Liquidation Value: If the value is being calculated in a liquidation scenario.
- x. Weighted Average Method: Under this method the weights are assigned to the values calculated under different valuation approaches.
- xi. Any other method accepted or notified by the Reserve Bank of India, Securities and Exchange Board or Income Tax Authorities.
- xii. Any other method(s) that the valuer may deem fit to adopt in the given circumstances of the case, provided that adequate justification for use of such method(s) (and not any of the methods above) must be included in the report.

## **Contents of Valuation Report (Rule 17.7):**

The report of valuation by a registered valuer shall be as near to and shall contain such information as set out in Form No. 17.3.

## **Duties of Registered Valuer [Section 247(2)]:**

A valuer is expected to assume the following responsibilities while carrying out a valuation engagement:

- exercise due diligence and care.
- make an impartial, true and fair valuation of assets that are being valued.
- make the valuation in accordance with the prescribed rules.
- prohibited to undertake valuation of assets in which he has a direct or indirect interest or becomes interested at any time during or after the valuation of that asset.

## **Penal Provisions [Section 247(3) & (4)]:**

If the registered valuer contravenes the provision of the section or the rule made thereunder, the valuer shall be punishable with the fine which shall not be less than ` 25,000/- but which may extend to ` 100,000/-.

If valuer has contravened such provision with the intention to defraud the company or its member, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than ` 100,000/- but which may extend to ` 500,000/-.

Where a valuer has been convicted as above, he shall be liable to-

- (i) refund the remuneration received by him to the company; and
- (ii) pay the damages to the company or to the other person for loss arising out of incorrect or misleading statement of particulars made in his report.

*Compiled by: Monica Jain, Article student*